

Brian Farrington, Esq.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOE DALE MARTINEZ AND)	
FIDENCIO LOPEZ, JR.,)	
Individually and on behalf)	
of all others similarly)	
situated,)	
)	
Plaintiffs,)	CIVIL ACTION
)	
VS.)	NO.: 2:11-CV-295
)	
REFINERY TERMINAL FIRE)	
COMPANY,)	
)	
Defendant.)	

ORAL DEPOSITION OF
BRIAN FARRINGTON, ESQ.
JUNE 21, 2013

ORAL DEPOSITION OF BRIAN FARRINGTON, ESQ.,
produced as a witness at the instance of the DEFENDANT,
and duly sworn, was taken in the above-styled and
numbered cause on June 21, 2013, from 8:53 a.m. to
10:56 a.m., before Kimberly Byrns Buchanan, CSR, RPR in
and for the State of Texas, reported by machine
shorthand, at the law offices of Cowles & Thompson,
901 Main Street, Suite 3900, Dallas, Texas 75202-3793,
pursuant to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

Exhibit "G"

Brian Farrington, Esq.

	Page 70	Page 72
1	A. Right, right.	1 MR. ALEXANDER: I have the opposite
2	Q. You must have been quoting the Federal	2 interpretation.
3	Register.	3 MR. SIECZKOWSKI: What's that?
4	A. Fair assumption. And correct.	4 MR. ALEXANDER: I like hearing it.
10:23 5	Q. And really when you -- and I -- correct my	10:25 5 MR. SIECZKOWSKI: So does the IRS, at
6	summarization if it's wrong.	6 least lately.
7	What they're trying to say is, look, just	7 Q. (BY MR. SIECZKOWSKI) Okay. You mentioned in
8	because these guys supervise just at the fire scene	8 here -- how much work have you had with the Motor
9	doesn't make them just supervisors. It's got to be more	9 Carrier rep?
10:23 10	than that. They've got to supervise regularly.	10:25 10 A. Extensive.
11	A. They -- it has to be their primary duty.	11 Q. Okay. With the interstate or the foreign
12	Q. Okay.	12 commerce side?
13	A. Yeah -- yes.	13 A. Mostly interstate.
14	THE WITNESS: Maybe you should write the	14 Q. Okay. What foreign commerce side experience do
10:23 15	Federal Register. It would be more succinct.	10:25 15 you have?
16	MR. SIECZKOWSKI: I'll never be in	16 A. Well, I've had cases in which the employer
17	politics. In -- it becomes very difficult to keep out	17 shipped things to -- you know, by international shipping
18	of it because everybody sends you something to invite	18 vessel --
19	you to fish fries and stuff like that.	19 Q. Uh-huh.
10:23 20	MR. ALEXANDER: You never come to our fish	10:25 20 A. -- to other countries.
21	fries. We want your money, Branscomb.	21 Q. Okay. So foreign commerce includes things
22	THE WITNESS: Quote, erat demonstrandum,	22 coming on and off the ships as well --
23	right?	23 A. Sure.
24	MR. SIECZKOWSKI: The record did not see	24 Q. -- into foreign trade zones, that sort of
10:24 25	my expression.	10:26 25 thing?

	Page 71	Page 73
1	Q. (BY MR. SIECZKOWSKI) All right. Let's see.	1 A. Under the right circumstances, yes.
2	And you mentioned that -- we were talking about	2 Q. Sure. And to be clear on the Motor Carrier
3	supervisors, and you mentioned -- you have a discussion	3 Act, it's really much broader than one would think
4	starting on page 49 of your report. And I don't know	4 because it's actually whatever the Department of
10:24 5	that it's going to be necessary to pull. But it's a	10:26 5 Transportation has authority to regulate, correct?
6	general proposition.	6 A. Yes. That is -- that is a requirement for the
7	Look, you can't double-count the employees	7 exemption to apply.
8	for purposes of determine whether or not a supervisor is	8 Q. Right. They don't have to regulate it. They
9	supervising two or more?	9 just have to have the authority to do so?
10:24 10	A. Correct.	10:26 10 A. Right. In order for them not to regulate it,
11	Q. You can't have four supervisors and one	11 they have to disavow jurisdiction.
12	underling?	12 Q. Now, where did you get that from?
13	A. Correct.	13 A. Oh, well, that's -- that happens all the time.
14	Q. Understood.	14 For example, they have disavowed jurisdiction over
10:24 15	MR. SIECZKOWSKI: I've actually had that	10:26 15 ambulances.
16	situation.	16 Q. They haven't disavowed jurisdiction. They said
17	THE WITNESS: It usually doesn't turn out	17 that the exception for overtime would not apply.
18	well.	18 A. Right. Well, I -- we're saying the same thing.
19	MR. SIECZKOWSKI: Well, it's kind of --	19 I think.
10:24 20	it's kind of like the same notion of single-person	10:26 20 Q. Well --
21	independent contractors. I hate when I heard -- hear	21 A. In other words, they're claiming that they
22	the words "contract labor".	22 don't have jurisdiction over ambulances so therefore
23	THE WITNESS: I'm right there with you.	23 ambulances can't be 13(b)(1) exempt.
24	MR. SIECZKOWSKI: I just start to cringe.	24 Q. Isn't that actually a misstatement? Didn't
10:24 25	Okay.	10:27 25 they say that, We are not going to exempt these people?

19 (Pages 70 to 73)

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Individually and on behalf
of all others similarly
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Plaintiffs,

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REFINERY TERMINAL FIRE
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Defendant.

CIVIL ACTION

NO.: 2:11-CV-295

REPORTER'S CERTIFICATION
DEPOSITION OF BRIAN FARRINGTON, ESQ.
JUNE 21, 2013

I, Kimberly Byrns Buchanan, Certified Shorthand
Reporter in and for the State of Texas, hereby certify to the
following:

That the witness, BRIAN FARRINGTON, ESQ., was duly sworn
by the officer and that the transcript of the oral deposition
is a true record of the testimony given by the witness;

That the deposition transcript was submitted on
June 26, 2013 to the witness or to the attorney for
the witness for examination, signature and return to me by

July 26, 2013;

Brian Farrington, Esq.

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1 That the amount of time used by each party at the
2 deposition is as follows:

3 Mr. Clif Alexander - 00 HOURS: 00 MINUTES,

4 Mr. Keith Sieczkowski - 01 HOURS: 41 MINUTES;

5 That pursuant to information given to the deposition
6 officer at the time said testimony was taken, the following
7 includes counsel for all parties of record:

8 Mr. Clif Alexander, Attorney for Plaintiffs, and Mr. Keith
9 Sieczkowski and Ms. Allison E. Moore, Attorneys for the
10 Defendant;

11 That \$ 019 is the deposition officer's charges to
12 the Defendant for preparing the original deposition
13 transcript and any copies of exhibits.

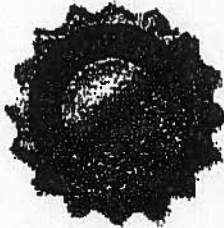
14 I further certify that I am neither counsel for,
15 related to, nor employed by any of the parties or attorneys
16 in the action in which this proceeding was taken, and further
17 that I am not financially or otherwise interested in the
18 outcome of the action.

19 Certified to by me this 22nd day of June, 2013.
20
21
22
23
24
25

DepoTexas

Brian Farrington, Esq.

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Kimberly Evans Buchanan
Kimberly Evans Buchanan, RPR
Texas CCR No. 7579
Expiration Date: 12/31/13
Firm Registration No. 459

DEPOTEXAS
6500 Greenville Avenue
Suite 445
Dallas, Texas 75206
(214) 373-4977

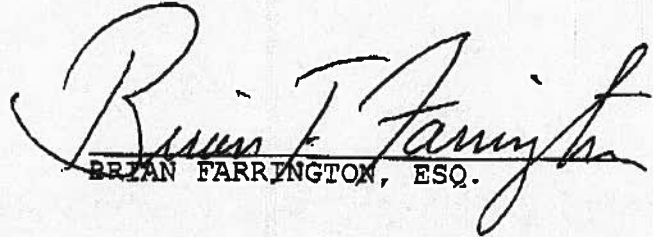
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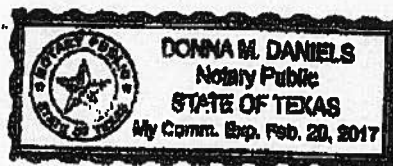
1 I, BRIAN FARRINGTON, ESQ., HAVE READ THE FOREGOING
2 DEPOSITION AND HEREBY AFFIX MY SIGNATURE THAT SAME IS TRUE
3 AND CORRECT, EXCEPT AS NOTED ABOVE.

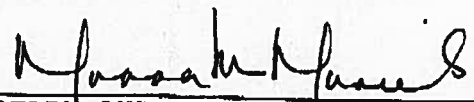
4 
5 BRIAN FARRINGTON, ESQ.

6
7
8
9 THE STATE OF Texas)
10 COUNTY OF Dallas)
11

12 BEFORE ME, Donna M. Daniels, ON THIS DAY
13 PERSONALLY APPEARED BRIAN FARRINGTON, ESQ., KNOWN TO ME (OR
14 PROVED TO ME UNDER OATH OR THROUGH
15 _____) (DESCRIPTION OF IDENTITY CARD OR
16 OTHER DOCUMENT) TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO
17 THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY
18 EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN
19 EXPRESSED.

20 GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS
21 26th DAY OF July, 2013.
22




NOTARY PUBLIC IN AND FOR

THE STATE OF Texas
COMMISSION EXPIRES: 2/20/17